

Informal Conference
S0430030, Browns Canyon Quarry
Wright Garff Resources LLC
March 1, 2007

- I. Issue: Can the Division deny Wright/Garff's small mine permit where a permit already exists for this site and the current operator is conducting mining activities, as defined in Utah Code Ann. § 40-6-4(14)(a).

A. Facts:

1. Wright/Garff submitted a notice of intention (NOI) to mine Brown's Canyon as a small mine on August 9, 2006.
2. While Wright/Garff owns the mineral estate, it does not own the surface estate of the proposed Brown's Canyon mine.
3. Lon Thomas of Star Stone Quarry (SSQ) owns the surface estate of the proposed Brown's Canyon mine.
 - (a) SSQ held a mineral lease from Wright/Garff to the minerals estate of the proposed Brown's Canyon mine. The mineral lease expired October 31, 2005.
 - (b) In the general area Wright/Garff proposes to mine, SSQ has created a disturbance, including an exposed high wall. Before the Division releases SSQ's bond, SSQ will have to reclaim the area. Such reclamation may require Wright/Garff to undue the reclamation in order to mine.
4. SSQ has a 26 acre large mine permit for the Peoa Blonde Quarry and a \$54,900 reclamation surety for the site. (Photo 1)
5. The entire 5 acres of the proposed Brown's Canyon is located within the permitted area of the Peoa Blonde Quarry. (See attached map).
6. Because of the existing SSQ large mine permit over the same area of the proposed Brown's Canyon mine, the Division refused to process the NOI, effectively denying it.
7. Wright/Garff timely sought an informal hearing to challenge the Division's decision.

B. Division's Position:

1. The division recognizes Wright/Garff's mineral interest is superior to SSQ's surface estate. Nevertheless, the Division cannot approve Wright/Garff's NOI because:

- a. An approved NOI is valid for the life of the mine. Utah Code Ann. § 40-8-16. SSQ holds a valid permit on the area proposed under the Wright/Garff NOI and is currently conducting mining activities. (Photo 2)
- b. The Division does not permit two mines over the same area because it must be able to determine the responsible party during operations and that reclamation as required by the statute and rules will be assured and conducted. Two permits over the same property would create an administrative impossibility, especially here, where the parties have a long history of hostility.

2. Wright/Garff would like the Division to revoke SSQ's permit because SSQ no longer has the right to take the mineral.

- a. The statute prevents the Division or the Board from revoking approval of an NOI unless (i) the operator fails to perform reclamation or conducts activities to prevent reclamation, (ii) the operator fails to provide/maintain adequate surety; or (iii) "mining operations" are continuously shut down for a permit exceeding 5 years. Utah Code Ann. § 40-8-16.

None of these factors applies to SSQ. The Division cannot revoke the permit.

- b. The statute does provide that: "If a change in the operation occurs, a mining operations representative shall submit an amendment to the NOI." *Id.* § 40-8-18(4)(a).

Under this provision, the Division might be able to require SSQ to amend its NOI to allow Wright/Garff access to its mineral estate. However, in that case, the Division would have to require SSQ to perform reclamation, which would include reclaiming areas that Wright/Garff may want to mine. (Photo 3)

- c. The statute also allows for a transfer in effect releasing: "the first operator from his responsibilities under his approved notice of intention, including surety, provided the successor assumes all of the duties of the former operator, to the satisfaction of the division, under this approved

notice of intention, including its then approved reclamation plan and the posting of surety.” *Id.* § 40 8 19.

Under this provision complete responsibility for all or a portion of the area would be clearly given to Wright/Garff.

C. Recommendation:

1. Approve the Division’s denial of Wright/Garff’s NOI because the area is currently under another permit.

2. Recommendation to the Parties:

a. The Division may allow the parties to transfer a portion of the SSQ permit to Wright/Garff, including liability for reclamation.

The Division cannot force the transfer. The parties must come to this arrangement on their own and agree upon a mining and reclamation plan that will work for each party.

b. Wright Garff would have to submit a valid NOI:

1) The previous NOI include several non-contiguous areas not connected by a road, non-contiguous areas making reclamation appear disjointed, no source of topsoil, and mining in an area where no surface or subsurface rights exist. (Photo 4)

Photo 1



Photo 2



Photo 3



Photo



Mine Number: M0430012
Mine Name: Peoa Blonde Quarry
Township 01 S Range 05 E Section 20 SLBM

Inspection Date Feb. 27, 2007
Map Produced by DKS

Acres Disturbed	21.77
Acres Regraded	0
Acres Seeded	0.78
Road Acres Disturbed	0

Total Acres Distrubed 22.55

Acres Released	0
Acres Excluded	0
Acres PreExisting	0
Acres Prelaw	0

Legend
All items symbolized in legend may not be appear on map

- Access

Mine

NonMine

Other

County Boundary

Interstate

US Route

State Route

Primary Route

Secondary Route

Main Dirt Road

Unimproved Road

Interchange

Trail
- Township or range Line

Township or range line: location doubtful

Section line

Section line: location doubtful

Bond Area

SITLA Mineral Leases

BLM Leases

Disturbed

Regraded

Seeded

Released

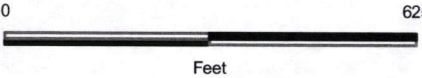
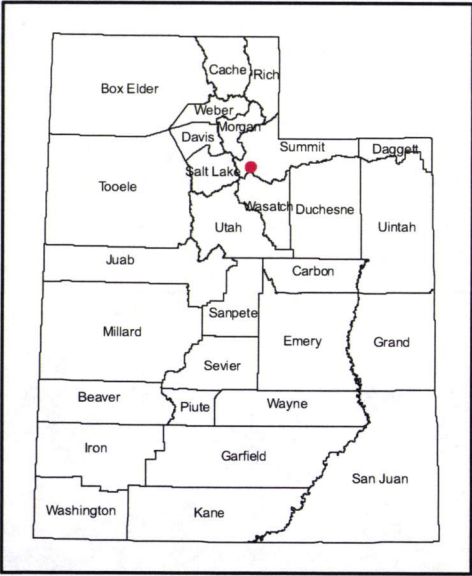
Excluded

PreExisting

Prelaw

CommunityPit

DOQ imagery date 2004



1:3,500 1 inch equals 292 feet
Verify Scale

Dept. of Natural Resources
Division of Oil, Gas, and Mining
Mineral Mines Program

Different data sources and input scales
may cause misalignment of data layers.
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